

Public Chapter 520

HOUSE BILL NO. 945

By Representative Stulce

Substituted for: Senate Bill No. 1593

By Senator Crutchfield

AN ACT to amend Tennessee Code Annotated, Title 65, Chapter 25, and to enact the "Electric Utility Comprehensive Equal Power and Authority Act of 1997".

WHEREAS, substantially all of the electricity generated and distributed for consumption in the State of Tennessee is generated by the Tennessee Valley Authority and distributed in turn by municipal electric systems and electric cooperatives; and

WHEREAS, in an increasingly competitive electric utility environment, additional services are being offered by electric utilities throughout the United States to enhance both the efficiency of electric service, and make maximum use of the facilities and assets of electric utilities; and it will be necessary for municipal electric utilities and electric cooperatives in the State of Tennessee to have the same power and authority to engage in those activities as are authorized for numerous other electric utilities throughout the United States, as well as other municipal and cooperative electric utilities in Tennessee; and

WHEREAS, under its contracts with municipal electric utilities and electric cooperatives in the State of Tennessee, the Tennessee Valley Authority has certain regulatory oversight of the business activities of municipal electric utilities and electric cooperatives that distribute TVA power; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and may be cited as the "Electric Utility Comprehensive Equal Power and Authority Act of 1997".

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Electric cooperative" means an electric cooperative or electric membership corporation, whether organized or operating under the provisions of Tennessee Code Annotated, Title 65, Chapter 25, or similar statutes of any other state, which, as of the date of this act, distributes electric power purchased from the Tennessee Valley Authority;

(2) "Municipal utility" and "municipal electric utility" means any governmental entity as defined in Tennessee Code Annotated, Section 29-20-102, having a system for the distribution of electricity, whether operated under the authority of a board of the governmental entity, a department of the governmental entity or under the authority of a board created pursuant to the provisions of the Tennessee Municipal Electric Plant Law, Tennessee Code Annotated, Title 7, Chapter 52, or by the authority of any other public or private

act of the General Assembly or pursuant to the charter of a municipality, and that operates an electric generation or distribution system which, as of the date of this act, distributes electricity purchased from the Tennessee Valley Authority and also includes any municipality, county or other political subdivision of another state, whether operated under a board or as a county or municipal department, which, as of the date of this act, distributes electricity purchased from the Tennessee Valley Authority.

SECTION 3. The General Assembly hereby finds and determines that participating in interlocal agreements by electric cooperatives and municipal utilities, as authorized by this act, provides a mutual benefit by reducing the expense of operations of municipal utilities and electric cooperatives and, as a result, reduces the cost of electricity for the citizens of Tennessee. Accordingly, the General Assembly hereby finds that all contributions of financial and administrative resources and associated costs and expenses that are made by a municipal utility pursuant to an interlocal agreement as authorized by this act, are made for a public and governmental purpose, and that all such contributions benefit the contributing municipal utilities.

SECTION 4. Every municipal electric utility and every electric cooperative are hereby authorized to enter into and to fulfill the terms of interlocal cooperation agreements under the authority of Tennessee Code Annotated, Title 12, Chapter 9, whether or not the parties of such agreements share equal powers with respect to the subject matter of such agreements. For the purpose of entering into agreements authorized under this chapter or entering into an interlocal agreement under Tennessee Code Annotated, Title 12, Chapter 9, municipal utilities and electric cooperatives are authorized to enter into interlocal agreements, as if each electric cooperative were a "public agency" for the purposes of Tennessee Code Annotated, Title 12, Chapter 9.

SECTION 5. Every municipal electric utility and every electric cooperative are hereby authorized to use surplus revenues in connection with the exercise of any power or authority they may exercise under any law, provided the exercise of that power or authority is not a violation of the terms and conditions of a wholesale power contract between the Tennessee Valley Authority and the respective municipal electric utility or electric cooperative and is not a violation of or otherwise prohibited by the terms and conditions of any covenants in any outstanding revenue bonds of the municipal electric utility or loan covenant of the electric cooperative, as may be applicable.

SECTION 6. Notwithstanding any other provisions of this act or other law to the contrary, if the exercise of power or authority granted by this act involves any system, plant, or equipment for the provision of telephone, telegraph, telecommunications services or any other like system, plant, or equipment, such exercise, whether by a municipal electric system, an electric cooperative or jointly, shall not be subject to the provisions of this act but instead shall be subject to the provisions of Tennessee Code Annotated, Title 7, Chapter 52, as amended. With respect to telephone, telegraph, or telecommunications services, electric cooperatives shall be subject to regulation by the Tennessee Regulatory Authority to the same extent as municipal electric utilities under Tennessee Code Annotated, Title 7, Chapter 52.

SECTION 7. In the exercise of their respective powers and authority, jointly and severally, under interlocal cooperation agreements entered into under the authority of this act and Tennessee Code Annotated, Title 12, Chapter 9, electric cooperatives and municipal utilities and any separate entity or body created under Tennessee Code Annotated, Section 12-9-104(c), may exercise such powers and authority regardless of the competitive consequences thereof.

SECTION 8. Nothing in this act shall be deemed to be an implied repeal of the service area limitations established in Tennessee Code Annotated, Section 6-51-112 or Title 65, Chapter 34.

SECTION 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. Nothing in this act shall be construed to change the requirements of Tennessee Code Annotated, Title 7, Chapter 82, with respect to the merger or acquisition of any water, sewer, or gas system of a utility district with or by a municipal electric utility or electric cooperative. Nothing in this act shall be construed to authorize any municipal electric utility or electric cooperative to provide a service for which a license, certification or registration is required pursuant to Tennessee Code Annotated, Title 62, Chapter 32, Part 3, or operate a cable system as defined by Tennessee Code Annotated, Section 7-59-201(2) for the provision of cable service, to provide pager services, or to operate as an internet service provider.

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.